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DE RUEHYE #0565/01 2261219  
ZNR UUUUU ZZH  
P 141219Z AUG 09  
FM AMEMBASSY YEREVAN  
TO RUEHC/SECSTATE WASHDC PRIORITY 9383  
RUEKJCS/SECDEF WASHDC PRIORITY

UNCLAS YEREVAN 000565

SIPDIS

E.O. 12958: N/A

TAGS: [ETTC](#) [PARM](#) [PREL](#) [KSTC](#) [AM](#)

SUBJECT: LEGAL CONSULTATIONS ON MUNITIONS AND DUAL-USE EXPORT  
CONTROL SYSTEMS, YEREVAN, ARMENIA, JULY 27 - 31, 2009

¶1. SUMMARY: The U.S. Department of State dispatched two export control legal experts (Jane Dalton and Rochelle Woodard) to Yerevan to consult with Government of Armenia (GOAM) officials during July 27-31, 2009 regarding possible changes to laws and regulations that would enable the GOAM to produce an effective export control system for munitions and related dual-use items. These consultations were arranged to provide the U.S. experts an opportunity to conduct a technical review of the munitions export control legal and regulatory system proposed by the Armenian Ministry of Defense (MOD), and to discuss with GOAM participants possible ways to strengthen and enhance that system. The objective was to encourage the GOAM to adopt a system that incorporates an independent, transparent process and meets international obligations and commitments. The meetings with GOAM officials took place in a cooperative, team-based atmosphere. By the conclusion of the consultations, MOD and MFA officials had identified five laws to be amended and six regulatory decrees or resolutions to be created or amended, in order to establish the legal and regulatory underpinnings for a munitions export control system. The MOD and MFA officials immediately submitted for interagency review the five proposed amendments to existing laws in order to have them cleared in time for submission to the current legislative session of the National Assembly. Once that is accomplished, the GOAM will take up the six regulatory decrees/resolutions for action.

¶2. SUMMARY CONTINUED: The U.S. legal experts also sought to engage GOAM officials on the interrelationship between munitions and WMD dual-use export control regimes, but clearly the focus of MOD officials was on the munitions export control system. The U.S. experts did have a useful meeting on this topic with the head of the State and Legal Affairs Department. They provided him with proposed edits to the current Armenian dual-use export control law that would strengthen its provisions regarding transits, brokering, end-use checks, and enforcement.

Initial Consultation Meeting  
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¶3. The initial consultation meeting held on July 27 was attended by participants from MOD, Ministry of Foreign Affairs (MFA), the National Security Service (NSS), the Ministry of Economy, the State Revenue Committee (Customs), and the Dual-Use Export Control Committee. The United States side included Embassy Yerevan officers and the legal experts.

¶A. GOAM Participants:

- Colonel Davit Tonoyan, MOD, Head of Defense Policy Department
- Sasun Simonyan, MOD, Deputy Head of Legal Department
- Virab Khachataryan, MOD, Attorney in Defense Policy Department
- Levon Amirjanyan, Ministry of Foreign Affairs (MFA), - Acting Head of Legal Department
- Ashot Vahanyan, Head of State and Legal Affairs Department (member of WMD Dual- Use Export Control Committee)
- Tigran Petrossyan, Ministry of Economy, Head of Defense Industry Division
- Artem Karapetyan, State Revenue Committee, Chief Customs Inspector
- Major Vahan Mirzoyan, National Security Service (NSS)

#### 1B. U.S. Participants

- William M. Draxler, Political-Economics Officer, Embassy Yerevan
- Steven Kessler, Resident Legal Advisor, Embassy Yerevan
- Paul J. Shott, EXBS Advisor, U.S. Embassy, Yerevan
- Davit Khachaturyan, Legal Assistant, U.S. Embassy, Yerevan
- Jane G. Dalton, Defense Trade Consultant to the U.S. Department of State
- Rochelle Woodard, Senior Counsel, Office of Chief Counsel for Industry and Security, U.S. Department of Commerce

14. Initial consultations addressed the Armenian legal system, the legal and regulatory basis for the Armenian dual-use export control system, and comparisons between the GOAM dual-use system and the MOD proposal for a munitions export control system. Note: The dual-use export control system in Armenia is not technically a "licensing" system, as it was enacted through stand-alone legislation outside the Armenian Licensing Law. Despite the suggestion made by U.S. experts that a similar, stand-alone munitions export control law would be the simplest and quickest way for the GOAM to establish a munitions export control system, MOD participants countered that establishing the munitions export control system as a part of the Licensing Law regime would strengthen the force and impact of the system and would enhance its enforcement. Such an approach, they argued, takes advantage of an existing, functioning regime that already contains many of the essential elements of an effective system. Only experience implementing the desired GOAM approach will determine the efficacy of this approach - e.g., if it holds together, if there are loopholes, or if there are any areas open to legal challenges.

#### Key Elements of Munitions Export Control Licensing System

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15. The first day of consultations also consisted of identifying the key elements that GOAM desires to incorporate into its munitions export control licensing system. This system must:

- Entail a transparent process that includes all relevant GOAM agencies.
- Effectively control imports, exports, re-exports, transits and brokering of conventional munitions and technical data, to include intangible transfers.
- Be based on the Wassenaar Arrangement Munitions List.
- Require thorough case-by-case licensing determinations.
- Require end-use and end-user certifications.
- Include enforcement mechanisms to deter/deal with violators.
- Specify reporting and paperwork retention requirements.
- Require industry internal compliance programs.
- Enable GOAM to comply with its international obligations and commitments.

#### Further Consultations

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16. The remainder of the consultations was conducted by a smaller working group attended by MOD and MFA participants. By the end of the week, the GOAM participants had identified five laws and five regulatory documents (decrees and resolutions) that need to be amended, and one new Procedural Decree to be promulgated, to establish the legal and regulatory framework for an effective munitions export control licensing system. Participants from both sides reviewed the proposed legal and regulatory amendments and discussed in detail the new draft decree establishing the procedures for the munitions export control licensing system. Although time did not permit a comprehensive and detailed review, it appeared that the total legislative and regulatory package developed by the GOAM, while complex and not without its deficiencies, could, if properly implemented, be a first step in fulfilling the key elements described in para 6 above.

#### Munitions Export Control Licensing System

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17. The munitions export control licensing system is envisioned by GOAM to operate as follows.

1A. The Licensing Law will be amended to add a new licensing requirement for the import, export, transit and brokering of

"military products." The Licensing Law, by its terms, mandates a six-month delay in the implementation of any new licensing requirements. Accordingly, the proposed amendments to the Licensing Law also will include a provision that the six-month delay will not apply in cases where necessary to implement Armenia's international security obligations.

1B. The new Procedural Decree will identify MOD as the licensing authority for military products. It will adopt the Wassenaar Arrangement munitions list verbatim as an appendix, thus identifying "military products" as all munitions, including technical data and software related to munitions, on the Wassenaar Arrangement munitions list. The term "military products" was chosen by MOD to reflect that the munitions list covers not only tangible hardware and technical data, but also technical data in an intangible (oral, visual, electronic) form.

1C. The new Procedural Decree also will establish the procedures for obtaining a license for the import, export, transit or brokering of military products. The license application will be coordinated by MOD with all relevant GOAM agencies, particularly MFA and NSS. The applicant will be vetted for, among other criteria, ownership by sanctioned entities and the ability to properly control munitions list items. MOD will have the authority to disapprove a license if granting it would be inconsistent with Armenia's national security and/or international obligations. If licensed, an entity will have to comply with reporting and paperwork retention requirements, maintain an internal compliance system, and submit for GOAM inspection its facilities and documentation.

1D. Once licensed, an entity will be required to secure approval from the MOD Licensing Committee before entering into a specific contract to import, export, transit or broker military products. It also will be required to secure approval from the Licensing Committee before actually importing, exporting, transiting or brokering any specific munitions list items or technical data. At various stages in the process, the licensed entity will have to provide end-use and end-user certificates, including assurances that the items will not be re-exported without permission, and identify the shippers/freight forwarders.

1E. To obtain an affirmative conclusion for a specific import, export, or transit, the request first will have to be reviewed by the Military Technical Commission, which includes representative from other GOAM agencies, such as MFA and NSS. The Military Technical Commission will offer an opinion as to whether the specific transaction under consideration would be consistent with

Armenia's international obligations. If it determines it is not, then MOD would have the authority to disapprove a specific import, export, or transit on these grounds. An analogous process will apply to a request to broker specific munitions list items.

1F. The system will be enforced through the Armenian Criminal Code, which contains prohibitions on smuggling/contraband, on conducting licensed activities without a license or while a license is suspended, and on disclosing state secrets.

1G. In addition to the changes to the Licensing Law, a number of conforming changes must be made to the Criminal Code, the Customs Code, the Weapons Law and the Stamp Law, as well as several decrees and resolutions.

#### Potential Weaknesses

18. U.S. legal experts identified the following potential weaknesses in the GOAM's proposed munitions export control licensing system: absence of a comprehensive list of definitions; lack of provisions concerning post shipment inspections/verifications; limited GOAM ability to monitor and enforce internal compliance programs for industries; limited capability of the GOAM to control transfers within the borders of Armenia; and the lack of explicit controls on intangible transfers. It also is unclear the extent to which the GOAM may deny licenses or specific shipments based on foreign policy considerations other than binding legal obligations.

19. The munitions export control licensing system envisioned by the

GOAM is complex. Its effectiveness will depend on the seamless interrelationship of numerous laws and decrees; the ability of the GOAM to implement the application, review, and approval/denial process and to maintain oversight of the licensed entities; the competence of the customs system to identify and prevent unlicensed shipments; and the willingness of the criminal justice system to prosecute violators.

#### Dual-Use Export Control System

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¶10. The U.S. legal experts met separately with Ashot Vahanyan, head of the State and Legal Affairs Department, to discuss Armenia's dual-use export control system. Mr. Vahanyan sits on the dual-use Export Control Committee that reviews export license applications. The U.S. experts suggested that GOAM consider a comprehensive overhaul of its existing dual-use export control system, to incorporate some of the enhancements that had been discussed for the munitions export control system. The U.S. experts provided an edited version, in English, of the existing GOAM dual-use export control law. (Note: Embassy Yerevan subsequently provided a translated version to Mr. Vahanyan.) Suggestions made in the edited dual-use law include developing a more rigorous process for monitoring and licensing the transit of dual-use exports through the Republic of Armenia; defining "transit" within the law; including brokering as a licensable activity, as envisioned by the European Union Commission regulation on dual-use exports; including the concept of end-use in export licensing considerations; reevaluating the "expert inspection" process associated with dual-use licensing; and strengthening the enforcement provisions of the dual-use law.

¶11. Mr. Vahanyan was receptive to the suggestions of the U.S. experts, but also used the meeting to voice concerns about the structure and operation of the munitions law. He suggested that a stand-alone law along the lines of the dual-use law would allow the two systems to complement each other more effectively. The U.S. experts offered to continue via e-mail the dialogue on strengthening the dual-use export control law after the Head of Department received a translated version of the suggested edits to the Armenian dual-use law.

#### Next Steps on Munitions Export Control Licensing System

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¶11. At the close of the consultations, the lead MOD participant expressed his view that the process of creating an effective munitions export control licensing regime is complex and does not easily lend itself to deadlines or to compressed timelines. He opined that it is possible that, as the package proceeds through the interagency process, contradictions or omissions or oversights will be identified and adjustments will be necessary. Nevertheless, he reaffirmed the GOAM commitment to have the new laws, decrees and resolutions in place by an internal deadline of late September 2009. He identified the next steps as follows:

¶A. MOD immediately will submit the proposed amendments to the laws for interagency review (Licensing Law, Criminal Code, Customs Code, Weapons Law, Stamp Law). Once that process is complete, GOAM will submit the amendments to the National Assembly for action.

¶B. Subsequently, the proposed revisions to the GOAM decrees and resolutions, and the new Procedural Decree, will be submitted for interagency review.

¶C. After the laws, decrees and resolutions are in place, MOD will begin implementing the munitions export control licensing system.

¶12. The U.S. legal experts offered to be available via e-mail for additional consultations as the laws and decrees proceed through interagency review. They did not anticipate additional in-person consultations would be necessary, unless the package meets significant interagency resistance.

¶13. Embassy points of contact for this effort are Political Officer Barton J. Putney (PutneyBJ@state.gov) and EXBS Advisor Paul J. Shott at ShottPJ@state.gov.

